84-1860 (1)

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CLERK

CASE #

IN THE SUPREME COURT OF THE UNITED STATES

SEPTEMBER, 1985 TERM

SHIRLEY E. ROUSSOS APPELLANT

VS.

RETINA CONSULTANTS, P.C., APPELLEES
ET AL

ON APPEAL FROM THE COURT OF APPEALS
OF MARYLAND

JURISDICTIONAL STATEMENT

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APPELLANT
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67 pp

LIST OF PARTIES TO PROCEEDING:

Shirley E. Roussos
10241 Ridgeline Dr.
Gaithersburg, Maryland
20879

APPELLANT

vs.

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6410 Rockledge Drive
Bethesda, Maryland

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Personnel Director, Employer
6410 Rockledge Drive
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6410 Rockledge Drive
Bethesda, Maryland 20817

Mary Jane Woodward
Office Manager, Business Manager
Retina Copsultants, P.C.
6410 Rockledge Drive (312)

Beth Lyon, Secretary
6410 Rockledge Drive (312)
Bethesda, Maryland 20817

APPELLEES

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED BY THE APPEAL

1. Has Appellant/Plaintiff been denied her rights to due process guaranteed by the 14th and 15th Amendments to the Federal Constitution in that her entire claim has been shut off by the granting of a demurrer to her suit against corporate employer and 3 employer-doctors, office manager and one secretary based on claim plaintiff did not state a cause of action because one element of "Intentional Infliction of Emotional Distress" was not met - that conduct alleged was not "outrageous" - when rule stated by plaintiff was that jury should decide when reasonable men could differ as to whether conduct was "outrageous" so as to incur liability, and reasonable men could differ when the alleged conduct was a conspiracy by employer with manager and employees to treat plaintiff in such a manner as to inflict emotional distress severe enough to make her resign and to engage in that behavior for 10 months - however subtly, and to conspire to falsely

charge plaintiff and terminate unjustly, causing extreme emotional distress and financial damages and loss of health care policy and rights to retirement when she had performed excellent work and had been excellent in conduct? (denied by all three Md. courts)

14th Amendment:

Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (Appellant contends "a jury shall decide" in this cause, when "reasonable men can differ" on whether "conduct outrageous", according to the law.

2. Has Appellant been denied her Federal constitutional rights to due process when the Maryland Courts breached their own laws at the Circuit, Special Appeals and Appeals Court level - the Maryland law that says "Jury shall be Judges of law and fact?"

3. In their actions, have the three courts in Maryland denied Appellant a "speedy trial" as guaranteed to civil litigant in Maryland Constitution?

4. Was the Appeal Court in violation of Appellant's federal constitutional right to due process, when she noted the law "jury shall decide whether conduct "outrageous" so as to incur liability" when reasonable men can differ and it was obvious and Appellant showed how reaeonable men can differ and it was obvious and Appellant showed how reasonable men could differ, when the Appeal Court did not grant petition for certiorari to review the case, denying consideration for jury decision rights and shutting off her claim without due process?

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OFFICIAL AND UNOFFICIAL REPORTS

Appellant knows of no official or unofficia reports of any opinions delivered in the courts below.

In the appendix, Appellant attaches the opinion of the ruling Judge in the Circuit Court as expressed in the transcript.

In the appendix, Appellant attaches the opinion of the ruling judges in the Court of Special Appeals - their opinion per curiam.

In petition for cert and petition for reconsideration of petition for cert no opinion was issued - only decision/ judgement, which is attached.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) The nature of the proceeding:

The proceeding before the Supreme Court is an appeal of the refusal to grant a petition for certiorari for review of Appellant's case, a denial of reconsideration of that petition, and review of the decision below of the Circuit Court and Court of Special Appeals, all to see if, in Appellant's suit for Intentional Infliction of Emotional Distress, her constitutional rights to due process, right of claim, right to redress of grievance, rights for jury to be judges of fact and law, have by arbitrary opinion and arbitrary cutting off of claim and refusal to reconsider it, been denied.

The nature of the proceedings below: Circuit Court held a demurrer hearing (since that time, demurrers were abolished in Maryland) when defendants demurred to Appellant's suit for Intentional Infliction of Emotional Distress. The court, after amendment of the suit, granted the defendants/respondents their demurrer on the only ground defendants raised: that Plaintiff/Appellant's suit supposedly failed to state a cause of action under Maryland law because she had not met one requirement, the only requirement defendants raised as having not been met - that the conduct of defendnats in plaintiff's suit, as alleged (Since rule 345 required the allegations must be taken as true)

were not, in their entirety, outrageous or extreme, as required by Maryland law. This is the crux of what was ruled on in all Maryland courts - conduct alleged was supposedly not outrageous, thus suit did not have one of the elements required - the only element raised by defendants as a lacking element, thus, because of that supposed "conduct alleged not outrageous" the court sustained demurrer saying because of that a cause of action had not been stated under Maryland law. Jury rule, as below, was raised. Nature of the Court of Special Appeals appeal and hearing was to determine if

Court below had erred in law, and/ or was in abuse of discretion and/or was in prejudice. Indirectly, the issue of Plaintiff/ Appellant's Maryland and Federal constitutional rights violations were raised in citing the law that jury should decide "outrageous conduct" issue when reasonable men could differ on issue and Appellant cited reasonable men could differ. Thus, the nature of proceeding was also to decide if, in accordance with due process, this issue should go to a jury.

Nature of the Appeal Court Petition was to decide if a review of the case and the decisions below would be granted.

(ii) Date of entry of Judgement in Circuit Court:

7/8/83 7/14/83

Date of entry of Judgement in Court of Special Appeals:

7/17/84 Mandate 8/16/84

Date of entry of Judgement
of Appeal Court:

10/31/84

Date of entry of Judgement
respecting reconsideration:

1/8/85

Notice of Appeal was filed
March 8, 1985 in the Court
of Appeals, with copies to
Circuit Court and Court of
Special Appeals. Later,
Appellant, uncertain when
and if Supreme Court should
get a copy before docketting,

sent a copy to the Supreme Court.

(iii) The statutory provision believed to confer jurisdiction on this court:

14th Amendment to Constitution of United States

(Due Process Rights
Right to jury trial
Right to fairness in judicial proceedings and hearings.

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDIANCES AND REGULATIONS THAT THE CASE INVOLVES:

Federal Constitution:

14th Amendment:.."Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (due process - jury trial)

7th Amendment:
In suits over $20, there shall be a trial by jury. (Md. also requires jury trial in civil cases)

RULES FOR DAMAGES IN TORT ACTIONS:

Abusive behavior and harassment viewed more critically when within framework of employer-employee relationship.

DAMAGES IN TORT ACTIONS: 1.00 - 7.47. Marilyn Minger, Jerome H. Nates, Clark Kimball, Diana Axelrod Richard P. Goldstein.

RULES

In suit for damages for intentional infliction of emotional distress, it is for a court to determine in first instance whether defendants may reasonably be regarded as sufficiently extrweme and outrageous to result in liability. Where reasonable men may differ, jury decides (Appeal 1145, p. 99)

Md. Digest, Vol. 5 B, Supplement 234-237: Md. 1977 Par. 5

CONSTITUTIONAL LAW:

CJS Const. Law Section 708 et seq. CONSTITUTIONAL LAW, KEY 321-329 (Md. Declaration Human Rights.) Technical Irregularities cannot be basis for depriving of right.

MARYLAND STATUTE

ANNOTATED CODE OF MARYLAND - CONSTITUTION- Article 19, 20, p. 39: Remedy for person for injury to person, property permits civil litigant speedy trial.

CONSTITUTIONAL LAW, MARYLAND, MLE 392, Chapter 11, page 22:

"A person may not be deprived of life except by due process of law."

TORT DEFINITION: Handbook of Everyday Law."

A tort has been defined generally aa a civil wrong. It is an invasion of any private and personal right to which each of us has by virtue of the Federal and State laws and Constitutions.

"It is the duty of all to observe and respect these rights. A breach of this duty as it is imposed by the law is a tort."

HARASSMENT DEFINITION:

Black's Law dictionary describes harassment asconduct, acts, tending

to annoy and shock. These acts may represent a misdemeanor and invasion of a person's right to be secure in person (constitution) would be invaded, thus tort committed, allowing for recovery.

STATEMENT OF THE CASE

The Appellant/Plaintiff Shirley E. Roussos, on April 28, 1982 (age 42 at the time, who had previously worked in a total of about 120 combined months (10 years) out of 25 years in office, secretarial, medical secretarial work), was hired by Retina Consultants, P.C., as one of two secretaries to the surgical staff, 3 doctors, through their then Manager Mitch Gittler, after she asked him and he assured her it was a permanent, long term career secretarial position and after she explained she could not at this age tolerate breaking in and then leaving to break in again.

Plaintiff/Appellant also took a typing test and talked with Ms. Beth Lyon, the other secretary who confirmed the position was a shared position as secretary to the three doctors.

On February 28, 1983, plaintiff/ Appellant filed suit for Intentional Infliction of Emotional Distress against the 6 defendants herein named, in Circuit, Montgomery County, Maryland. Defendants demurred to suit and a hearing was held 4/25/83 - Judge J. Frosh gave 30 days to amend. In that hearing, Judge Frosh stated that Appellant had been "brought before the entire group" (3 Drs., 10 employees) and "told she could resign or be fired." This was not true - 2 doctors and manager were present when she was told "We have decided to terminate you." Dr. Pappas then suggested after she was terminated taht "You can resign - for any reason - say the work was too much....", because she would have to "account for this period of employment."

Since Appellant had done nothing wrong, she did not resign.

Appellant felt Judge Frosh gave indication that he was prejudiced in the case in that statement because it revealed a concept of

what happened not based on court papers or hearings.

On 5/12/83, plaintiff filed amended suit; on 7/8/83, Judge Frosh granted demurrer without leave to amend by sustaining defendants' demurrer on the only grounds they had asked, and this is the only issue that was ever ruled on by the court: whether a cause of action was stated in declaration - stated by Maryland law, examining only whether conduct alledged was "outrageous." (The case was never decided on the merits - defendants have not yet given an answer, been submitted to discovery or deposed.)

Plaintiff argued in the Maryland

courts that case law had handed do n the doctrine "where reasonable men could differ, jury decides" on whether conduct is sufficiently outrageous to incur liability. (among other arguments.)

On appeal to Maryland Court of Special Appeals, Plaintiff/Appellant argued Judge Frosh had erred at law and cited law, cases, authorities to bear this out, indicating the constitutional breach by arguing that jury should decide the matter of outrageousness as above law indicates. She indicated where some states had declared a cause of action existed when there was less "outrageousness", or in similar circumstances. Since the states have varied widely in

their interpretation, the jury approach held credibility.

Appellant argued in both courts the charges indicated outrageous conduct by Maryland law, that 3 doctor employers conspired with each other, the manager and employees to bring appellant to such emotional distress (a threat to mental health) as to force her to resign and if plan failed, to make false charges and terminate her - and described 10 months of carrying out the plan - ending in the extreme emotional distress of plaintiff, false charge and unjust termination by employer after a long term job had been promised, after the manual stated a policy of fairness and implied all proceedings would be fair, and after appellant's work and conduct had been excellent.

The Court of Special Appeals, while ruling Appellant's case was not frivolous, and noting a case of a pattern of workplace harassment such as Appellant charged, in which it was decided a cause of action had been stated, sustained Circuit Court decision.

Appellant petitioned Md. Appeal Court for Certiorari in this case, noting points of law and authority to be reviewed and raised issue of right to trial by jury, due process by way of law on "jury should decide where reasonable men may differ." and indicated her case was not the same as the Russell Mirabile vs. Continental Can Casualty decided by Md. Court of Special Appeals in 1982 (Continental Can denied cert) to which the defendants referred, trying to liken her case to his, but raised new questions for Appeal Court about defendants' conspiracy

throughout majority of an employee's employment, with purpose to cause such emotional distress that she would resign, then to engage in such harassing techniques, and by plan, when she would not resign, placing a false charge against her to set stage and then terminated her unjustly. It is inherent that in deciding whether these constitutional rights were violated, it must be decided whether the implied ruling that the case was one in which reasonable men could not differ was so obviously in error at law, and/or in prejudice and/or in abuse of discretion as to be in violation of due process and violate Appellant's right to redress of grievances, jury trial, and for jury to be judges of fact and law as quoted by Appellant - Maryland law.

For those who feel they have been made to feel insecure in their persons by harassment (which can be a misdemeanor in Maryland), and feel their life security - their job - was lost due to such harassment, the question is should a judge shut off their claim or should it be ruled unconstitutional and against due process to rule that an attempt by employers, using their manager and employees, to bring an employee to a point of emotional distress to force that employee to resign, and using conducts, whether subtle or blatant, designed to bring about that distress, over a long period of time, and conspiring to falsely charge such employee if such employee did not resign, to set the stage for the termination desired --to rule that that kind of conspiracy and behavior, which is exactly what appellant charged - is

not a case in which reasonable men could differ as to whether the conduct was "outrageous" as required by the tort so as to impose liability -- and to not turn it over to the jury decision -- is unconstitutional by depriving of due process and jury trial.

In arguing her case before the Maryland Courts, Appellant cited this jury rule - and now she comes to the Supreme Court and that is the statement of the case.

Appeal Court denied petition for certiori and motion for reconsideration 1/8/85.

Appellant now appeals to Supreme Court that due process (Federal Constitution, 14th and 15th Amendment) right of Appellant has been violated in premature shutting off of her case, denying her remedy, without good legal cause and in violation of the "jury shouuld decide" law because reasonable men could differ in her case. This violation is cited in the judgements of all three courts.

STATEMENT OF THE REASONS WHY QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR THEIR RESOLUTION

The tort "Intentional Infliction of Emotional Distress" has gained widespread

acceptance in all the states. Maryland just accepted it in 1977 and around the nation, "outrageous" conduct is still being defined. Workplace harassment is becoming a nationwide problem and represents a threat to the health and security of workers and the security of the nation. It represents violations of fundamental federal constitutional rights as to deprivation of rights to personal security and deprivation of due process rights. In this particular case, the question of importance is can the courts also cut off the main redress such workers who are not protected by unions or government or workplace rules (the majority of workers)have, i.e. to sue for intentional infliction of emotional distress, by usurping the function of the jury, where reasonable men can differ, to decide if the conduct alleged is sufficiently outrageous to warrant liability? In-

directly the case is important to the nation's workers in whether they have a right to be secure in their persons at the workplace where they spend most of their time, i.e., free from harassment and/or conspiracies against them, which cause ill health, emotional distress which may cause them, perosns in the community, and even the nation great harm, especially when numbers of persona so treated multiplies and the results of such treatment multiplies.

The right to be free of such harassment is implied in the right to sue for the tort of "Intentional Infliction of Emotional Distress" - so the ultimate question of this case, besides the above, is does shutiting off the claim, in a case where reasonable men can differ, without letting jury decide whether conduct alleged is outrageous so as to incur liability, represent constitutional violation of due process, right to jury trial, right for jury to be judges of law in fact, rihgt to redress for grievances?

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have something from Maryland Digest, Volume 5B, Criminal Law 1004 to Dedication. Supplement 234237, Maryland, 1977, paragraph 3.

> "In suit for damages for intentional infliction of emotional distress, it is for a court to determine in first instance whether defendant's conduct may reasonably be regarded as extreme and outrageous. Where reasonable men may differ, it is for a jury to determine whether in a particular case, conduct has been sufficiently extreme and outrageous to result in liability."

And I would say that possibly this is the case where reasonable men may differ, although I don't see it that way.

I think that's all I have to say for now.

THE COURT: I have read the amended declaration in this case which you have filed on your own behalf, and it is as you have indicated, you've gone into considerable detail to set forth the conduct that you believe is, rises to the level of our Court of Appeals standards of extreme and outrageous.

In your arguments this morning you have indicated that perhaps the action of Beth Lyon is the best example of extreme and outrageous conduct. As I read the complaint and the statement that you ascribe to Ms. Lyon, it is that she corrected your pronunciation, your spelling, your grammar, when 99% of the time as you say you have to show her that she was actually not correct in her criticism, that she called you stupid and told you to shut up and mind your own business; and that she wrongly instructed you when you were being, when you were new. She wrongly instructed you on many things.

I don't find that those are --

MS. ROUSSOS: May I say something?

THE COURT: Just a moment. Extreme and outrageous. I'll give you a chance again. The conduct that you ascribe to Dr.Pappas is that he treated you rudely, impatiently and with contempt when you experienced difficulty with ophthalmic terminology; that he himself made incorrect corrections. You say that he refused to assign you to an empty office so that you could escape the abuse of Ms. Lyon, and refused to make a phone available to you.

He was unresponsive to your requests for opportunities to further your career development; that he, Dr. Pappas didn't insist that Dr. King give specifics on the ultimate memo to you and conspired to force you to resign.

You say that Dr. King was unkind and was unpleasant. He raised his voice, grabbed paper out of your hand; rarely spoke to you in

a sociable manner. He wouldn't return your greeting of good morning, and wouldn't be specific in responding to a letter of February 24th, "82; and that same evening he was at a staff outing and apparently was talking about you.

Dr. Stephens cooperated in the conspiracy. He treated other employers more kindly and the tone was very bad that he used to you. Also facially, facial expressions and he spoke sharply to you. He insisted on spelling simple words to you when you didn't need that kind of correction.

Mary Woodward you say excluded you from conversations while being friendly to the rest of the office, and wouldn't allow you to use an empty office; contemptuous with expressions and tone of voice, and accused you of charging into Dr. Pappas'office and refused to discuss your career with you and relegated to you simple tasks rather than the kind of things that you were capable of doing.

I don't find that this conduct rises to the extreme and outrageous standard that our Court of Appeals has enunciated for this type of suit. Retina Consultants, P.C., the professional corporation, was not, the doctors themselves were not performing professional service on behalf of the corporation in the sense that professional service is referred to in our suits. It may be that they were managing the business of the Retina Consultants, but I don't think that's the professional service that is referred to in the cases.

I recognize, Mrs. Roussos, that you have been treated badly. My problem is that you have framed a law suit as one lying in a relatively new field of tortious conduct, that is intentional infliction of emotional distress. It requires a standard that has

been set forth in the first case that Judge Levine wrote the opinion in, and in the later cases by the Court of Special Appeals. I don't believe, after seeing both the first declaration and the amended declaration and after hearing what you have had to say and reading closely the allegations against all of the five individuals and the corporation, that there is any reason why I should inflict on you the obligation to at this point try to amend your declaration.

Either your declaration is good and it should fly, or your declaration however amended is not going to rise to the standards that the Court of Appeals has enunciated. It's my belief that it does not now, and it's my belief that it won't be helped by allowing you or forcing you to amend it again.

I think the least expensive avenue for you is to go to the Court of Appeals

now and get their determination if so you wish. That I'm wrong in saying that this case cannot fly as emotional, as a tortious or an intentional infliction of emotional harm.

In other words by my saying today you can't make it, you are able to go to the Court of Appeals and say that Judge is wrong. My suit is correctly stated. I should be allowed to go to the jury iwth it. Reasonable men can differ on whether this is or isn't the extreme and outrageous conduct. So that if the Court of Appeals says your declaration is okay, they will reinstate your suit and say Mr. Flynn you've got to answer it; and it's going before a jury.

If I let you again amend, and you go before another Judge or I say to Mr. Flynn, answer this suit and you go to trial, and you go to the expense and time and the trouble and then you're knocked out because the Judge at that time says as a matter of law you haven't

proved anything that's extreme and outrageous, in order to go to the Court of Appeals you've got to have a copy of the entire transcript of a trial to see whether the trial evidence was extreme and outrageous.

And I don't believe that even if you prove the allegations you've got in here, and even if there's testimony as to that, I don't think that ultimately it's going to fly as a case where you're going to get any result from a jury; and I think I'm doing you no favor by requiring that you go to trial in this case and then pay for a transcript and go to the Court of Appeals at that point.

I think it's far easier for you today to simply say to the Court of Appeals, I think I ought to be allowed to go to the jury and I think Judge Frosh was just plain wrong. And if they say that I'm wrong, then you'll have a jury trial.

On the other hand if they say I'm right and they confirm what I'm doing

today by sustaining the demurrer without leave to amend, if they say I'm right, you c an save the problem of going before a jury; and you can go to the Court of Appeals if you want on it.

But I think the only result that really is one that's dictated both by my concept of the law and by judicial economy and economy for the client, is by saying at this point that I don't think that you've got a cause of action for emotional distress intentionally inflicted, because you simply can't make a case of it.

So I sustain the demurrer without leave to amend at this point.

MS. ROUSSOS: May I speak for the record?

THE COURT: Sure.

MS. ROUSSOS: Okay. I think the most important thing you seem to have left out when you discuss the whole case, you never

once mentioned that this is charged as a conspiracy, which the five people who were working over me, including the president, and the treasurer and so forth and so on, that they did conspire through this method.

It isn't really so much as to what the actual behaviors they engaged in by themselves, looked at by themselves, could be considered to be extreme and outrageous, but the fact that they conspired and calculated that by behaving in this manner, most people would not want to work under that and would resign; and that this was their intent all along and it wouldn't have taken really extreme measures to bring about that feeling --

THE COURT: Ms. Roussos, I have considered that, and I don't believe that simply by bundling all of these actions into one suit and saying that all of these actions constitutes a conspiracy, makes your case fly any better.

And I think again that it's just something you're going to have to have resolved

by the Court of Appeals sooner or later; and I think the best time is now.

So I will abide by my determination and sustain the demurrer without leave to amend.

(Whereupon, the Court adjourned in this matter.)

DOCKET ENTRY LISTINGS

CIRCUIT COURT L 62297

7/8/83 and 7/14/83
Judgement entered in
favor of defendants
for costs - docket
entries #27, #28

From Circuit Court file:

7/8/83 Hearing on Defendants' Demurrer to Amended Suit (#23) (Frosh, J.) sustained without leave to amend. Tape 7/8/83 - 11--209.4--296.3

7/8/83 Court enters judgement in favor of defendants for costs.

(initialed) PM

DOCKET ENTRIES Law 63297

7/8/83	#26.	Hearing on Defendants' Demurrer to Amended Suit (#23) (Frosh J.) sustained without leave to amend. Tape 7/8/83-11-209.4-296.3
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COPY OF OPINION

COURT OF SPECIAL APPEALS, MARYLAND

JUDGES WEANT, GARRITY, ALPERT _ PER CURIAM

FILED: July 17, 1984

UNREPORTED

IN THE CURT OF SPECIAL APPEALS

OF MARYLAND

No. 1145

September Term, 1983

SHIRLEY E. ROUSSOS

v.

RETINA CONSULTANTS, P.C.,
ET AL.

Weant
Garrity
Alpert,

JJ.

Per Curiam

Filed July 17, 1984

PER CURIAM

The appellant, Shirley E. Roussos, filed on February 28, 1983, a one-count declaration against her former employers and co-workers for the intentional infliction of emotional distress. The appellees demurred to the allegations, and the Circuit Court for Montgomery County sustained their demurrer with leave to amend.

An amended pleading was filed on May 12, 1983. The 13-page, single-count declaration averred that the corporate and individual defendants, Retina Consultants, P.C., Dr. Stephen Pappas, Dr. Lawrence King, Dr. Robert Stephens, Ms. Mary Jane Woodward, and Ms. Beth Lyon, "did intentionally and without regard for the psychological, emotional, and mental health of the plaintiff, and with malice, conspiratorially, for the purpose of forcing the plaintiff to resign... cause emotional distress in plaintiff of an extreme

NATURE, EVENTUALLY CAUSING EXTREME ANXIETY..." The amended declaration set fourth a detailed narrative of the parties' conduct during the period of April 28, 1982, until February 28, 1983.

The defendants demurred to the amended declaration on the ground that it failed to allege "extreme and outrageous" conduct on the aprt of the defendants. Following a hearing, the demurrer was sustained without leave to amend.

On appeal, Ms. Roussos contends that the circuit court erred in sustaining the demurrer without leave to amend on the grounds that the defendants' conduct was sufficiently extreme to constitute an element of the intentional tort.

For the reasons set forth in this opinion, we shall affirm the judgement of the circuit court.

Appellate Review of a Sustained Demurrer

It is well-settled in Maryalnd that for a

plaintiff to withstand a demurrer's challenge to the sufficiency of the pleadings, the plaintiff must have alleged facts which, if proven, would entitle her to recovery. In ruling on the demurrer, the court is required to accept as true all well-pleaded facts and any reasonable inferences which may be drawn therefrom. Schwartz v. Merchants Mortgage Co., 272 Md. 305 (1974); Hooke v. Equitable Credit Corp., 42 Md. App. 610, 612 (1979). Only those matters which appear on the face of the amended declaration, as particularized, may be considered by the court. Edelstein v. Nationwide Mutual Ins. Co., 252 Md. 455, 463 (1969).

To state a cause of action for the intentional infliciton of emotional distress, a plaintiff must allege facts sufficient to show four elements which must coalesce to impose liability. These elements, as listed by the Court of Appeals in Harris v. Jones, 281 Md. 560, 566 (1977) are:

1. The conduct must be intentional or reckless;

2. The conduct must be extreme and outrageous;

3. There must be a causal connection between the wrongful conduct and the emotional distress;

4. The emotional distress must be severe.

The failure to plead inadequately any one of these elements would render the declaration demurrable. In the present case, the element of extreme and outrageous conduct is lacking.

Extreme and Outrageous Conduct

In its analysis of the tort of intentional infliction of emotional distress, the Court of Appeals in Harris referred to the Restatement of Torts (Second), Ch. 2, Emotional Distress, § 46 (1965). Speaking for the Court, Chief Judge Murphy stated:

> Whether the conduct of a defendent has been "extreme and outrageous", so as to satisfy that element of the tort, has been a particularly troublesome question Section 46 of the Restatement, comment d, states that "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded

as atrocious and utterly intolerable in a civilized community." The comment goes on to state that liability does not extend, however:

"to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind....

Comment f states that the extreme and outrageous character of the conduct "may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity." The comment continues:

> The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know. It must be emphasized...that major outrage is essential to the tort.."

In determining whether conduct is extreme and outrageous, it should not be considered in a sterile setting, detached from the surroundings in which it occurred. Pakos v. Clark, 253 Or. 113 453 P.2d 682 (1969).

> The personality of the individual to whom the misconduct is directed is also a factor. "There is a difference between violent and vile profanity addressed to a lady, and the same language to a Butte miner and a United States marine." Prosser, Intentional Infliction of Mental Suffering: A New Tort, @& Mich. L. Rev. 874, 887 (1939). Id. at 567

The Court of Appeals reviewed several cases from the appellate courts of sister states, showing that isolated acts of abusive behavior would not be held to constitute extreme and outrageous conduct. The Court then concluded that:

> It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as extreme and outrageous; where reasonable men may differ, it is for the jury to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability. Restatement, supra, § 46, comment h; Alcorn v. Anbro Engineering, Inc.,

2 Cal. 3d 493, 86 Cal. Rptr. 88, 468 P. 2d 216 (1970)...

> In cases where the defendant is in a peculiar position to harass the plaintiff, and cause emotional distress, his conduct will be carefully scrutinized by the courts. Id. at 569.

The Court of Appeals in Harris did not decide whether the defendant's conduct was extreme and outrageous, but limited its discussion of the merits of that case to the element of severity of harm. In a subsequent case, however, this Court applied the Court of Appeals' analysis of the conduct element to the particular facts of the case.

In Continental Casualty Co. v. Mirabile, 52 Md. App. 387, cert denied, 294 Md. 652 (1982), this Court held that a plaintiff failed to substantiate the tort of intentional infliction of emotional distress, and that a defendant's verdict was properly directed, when the plaintiff presented evidence that his employer "moved him from desk to

yelled and screamed at him to move away from a particular desk, and may have tapped him on the nose and pushed him." Id. at 405. We concluded in Mirabile that the verdict was correctly directed because no rational trier of fact could conclude that the defendant's actions were more than rude and amounted to extreme and outrageous conduct.

In the present case, the appellant averred in her declaration several facts which, as she asserts on appeal, make her situation worse than that of the victims in Harris or Mirabile. She asserts that she was victimized by not just one tortfeasor, but by five persons acting in concert for the agreed purpose of terminating her employment with Retina Consultants. She argues that in furtherance of her employers' "conspiratorial plan", she was treated in a "derogatory manner"

by the defendants for a period of ten months, and that because of this treatment, she suffered anxiety, depression and tachycardia, severe enough to warrant the aid of a psychologist and medication. Ultimately, the appellant was terminated from her job on the basis of a false charge of "disruptive conduct", according to her declaration.

In his oral opinion, delivered at the hearing on the appellees' demurrer, the hearing judge stated that he would sustain the demurrer because while he conceded that the appellant was "treated badly", he could not find that the appellees' conduct "rises to the extreme and outrageous standard that our Court of Appeals has enunciated for this type of suit." Responding to the appellant's argument that the

individual insults by the appellees may not have been extreme, but that their combined effect was extreme, the judge stated, "I don't believe that simply by bundling all of these actions into one suit and saying that all of these actions constitute a conspiracy, makes your case fly any better."

On appeal, the appellant renews her contention that, contrary to the hearing judge's opinion, the aggregate effect of numerous insults by five employers and co-workers during a period of ten months "when considered in totality", constitutes extreme and outrageous conduct. In the colloquial, the appellant contends that the appellees' use of a "Chinese water torture", with each drop individually harmless, but collectively devastating was as extreme as a single application of "the rack."

The appellant's contention is not frivolous. It is similar to the argument made in Mirabile, 52 Md. App. at 391, that "a pattern of workplace harassment" could be deemed tortious. This contention has been accepted by other appellate courts. In Contreras v. Crown Zellerback Corp., 88 Wash. 2d 735, 565 P. 2d 1173 (1977), the appellate court for the State of Washington held a plaintiff had sufficiently stated a cause of action by alleging that his employer's agents had caused him severe emotional distress by their acts of intimidation, demotions, public scorn and racial slurs.

The Supreme Judicial Court of Massachusetts, in Boyle v. Wenk, 378 Mass. 592, 392 N.E.2d 1053 (1979), has similarly held that repeated harassment, even by a single tortfeasor, "may compound

the outrageousness of the incidents, which, taken individually, might not be sufficiently extreme to warrant liability for infliction of emotional distress." The Massachusetts Court specifically rejected the tortfeasor's argument that each individual incident had to be isolated and examined to determine if it were outrageous. The Court held that the jury was entitled to draw reasonable inferences from the totality of the circumstances. Id., 392 N.E. 2d at 1055-6.

The appellant's contention concerning the legal effect of the aggregation of the insults she suffered fails, however, upon examination of her specific allegations. She alleges that the defendants not only acted against her, but also that the defendants refrained from acting in her favor. While

the affirmative insults of the defendants could be considered by the hearing judge for the purpose of determining whether a cause of action was stated, there is no basis for contending that the hearing judge should have considered the defendants' refraining from courtesies and salutations as factors in the aggregate of the defendants' harmful conduct. Such allegations as the defendants' failure to return greetings and exclusion of the appellant from social functions do not constitute conduct which in the collective could be found to constitute extreme or outrageous conduct. The more severe insults alleged by the appellant, including the termination of her job on charges of "disruptive conduct" and "lowering morale", rise to the level of indignities. We cannot say, however, that the few affirmative acts of the defendants,

spread out across several months, go beyond the bounds of human decency and could be found by a jury to constitute collectively extreme and out-= rageous conduct. See Dowling v. Blue Cross of Florida, Inc., 338 So. 2d 88 (Fla. App. 1976) in which Florida's intermediate appellate court held that plaintiffs who alleged that they were dismissed from employment on the basis of a false accusation failed to state a cause of action for intentional infliction of emotional distress. Accord, Van Buskirk v. Bleiler, 46 App. Div. 2d 707, 360 N.Y.S . 2d 88 (1974)

An additional factor in the appellant's favor is that the incidents related in her declaration are alleged to have occurred at her workplace and with the ratification, if not the encouragement, of her employers. As noted by the appellate court in Alcorn v. Anbro Eng., supra,

the relationship of the employee should entitle him or her to a degree of protection by the employer from insults and injuries, more so than if the employee were a mere stranger. Because of this paternalistic relationship, harsh insults received during the course of employment may constitute extreme conduct, whereas the same behavior encountered on the city street might not give rise to a cause of action in tort. See Annot. Liability of Employer for Intentionally Causing Employee Emotional Distress, 86 A.L.R. 3d 454 (1978), for discussion of this additional aspect of the tort.

The Court of Appeals, however, has not indicated the extent to which the employer-employee relationship will bolster a plaintiff's allegations of reprehensible behavior. In Harris

v. Jones, 281 Md. at 573, the Court granted that the employer's conduct had been cruel and insensitive, and conceded that the employer held a position of authority over the employee. The Court, nevertheless, held that the humiliation suffered over a five-month period by over 30 incidents, did not warrant recovery.

Given the standards established in the controlling cases of Harris and Mirabile, we hold that the hearing judge properly sustained the appellees' demurrer.

JUDGEMENT AFFIRMED.

APPELLANT TO PAY COSTS.

This opinion bore no signature.

MANDATE

COURT OF SPECIAL APPEALS, MARYLAND

No. 1145 September Term, 1983

July 17, 1984: Per Curiam filed

Judgement affirmed

Appellant to pay costs

August 16, 1984: Mandate issued

MANDATE

COURT OF SPECIAL APPEALS OF MARYLAND
No. 1145, September Term
1983

Shirley E. Roussos

v.

Retina Consultants, P.C., et al

July 17, 1984
Per Curiam filed
Judgement affirmed
Appellant to pay costs

August 16, 1984:
Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for Montgomery County

Record	30.00
Stenographer	87.40

In Court of Special Appeals:

Filing Record on Appeal	30.00
Printing Brief for Appellant	672.00
Reply Brief	115.20
Portion of Record Extract Appellant	
Printing Brief for Cross Appellee	

Printing Brief for
Appellee $100.80

Portion of Record Extract
- Appellee
Printing Brief for Cross-
Appellant

STATE OF MARYLAND, SCT:
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.
In testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals this Sixteenth day of August A.D. 1984

(signature)
HOWARD E. FRIEDMAN
Clerk of the court

of Special Appeals Md. Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

ORDER

MARYLAND COURT OF APPEALS

October 31, 1984

DENIAL OF PETITION FOR CERTIORARI

Judge Robert C. Murphy, Chief Judge

SHIRLEY E. ROUSSOS

V.

RETINA CONSULTANTS, P.C. ET AL.

In the

Court of Appeals

of Maryland

Petition
Docket No. 366

September Term, 1984

(No. 1145, September Term, 1984 Court of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiori to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

(no signature, just typed)

/s/ Robert C. Murphy
Chief Judge

Date: October 31, 1984

ORDER

COURT OF APPEALS OF MARYLAND

DENIAL OF MOTION FOR RECONSIDERATION

January 8, 1985

ROBERT C. MURPHY, CHIEF JUDGE

SHIRLEY E. ROUSSOS	:	In the
V.	:	Court of Appeals
RETINA CONSULTANTS, P.C. et al	:	of Maryland
	:	Petition Docket #366
	:	September Term, 1984

ORDER

Upon consideration of the motion for reconsideration filed in the above entitled case, it is this 8th day of January, 1985

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

(just typed, no signature)

/s/ Robert C. Murphy
Chief Judge

(January 8, 1985 order)

NOTICE OF APPEAL

FILED IN MARYLAND

COURT OF APPEALS

Copies to Maryland Court of Special Appeals, Circuit Court of Montgomery County, Attorneys Michael F. Flynn and Geoffrey Gavett for defendants and subsequently a copy to the Supreme Court of the United States.

FILED IN MD. COURT OF APPEALS ON 2/15/85

IN THE MARYLAND COURT OF APPEALS

Shirley E. Roussos
Appellant

vs.

Retina Consultants, P.C., et Al
Appellees

Circuit Court Mo. Co., Md.
(L63297)
Court of Special Appeals
of Maryland Appeal 1145

Courtof Appeals of Md.
Petition Docket 366

Supreme Court Appeal #_____
(To be assigned)

NOTICE OF APPEAL

Plaintiff/Appellant Pro Se in this case. Shirley E. Roussos, gives notice this 15th day of February, 1985 that she will take an Appeal to the U.S. Supreme Court on federal questions in her case numbers listed above.

JUDGEMENTS TO BE APPEALED FROM:

1. 1/8/85 Judgement of Judge Robert Murphy, Maryland Court of Appeals, denying reconsideration of denial of petition of writ of certiorari to the Maryland Court of Special Appeals.

2. 10/31/84 denial for petition for a writ of certiorari to the Court of Special Appeals, Maryland, Judge John C. Murphy, Chief Judge.

Correction note: Both above petitions were to Court of Appeals.

3. 7/8/84 Judgement of Judges Weant, Garrity, Alpert, Court of Special Appeals, Maryland, affirmiang Judge Frosh's decision.

4. 7/8/83 Decision of Judge Stanley Frosh, sustaining defendants' demurrer to plaintiff's suit for intentional infliction of Emotional Distress on theory plaintiff's suit did not state a cause of action because it did not allow conduct extreme and outrageous as meets the standards of the Court of Appeals of Maryland

and based in part on the Restatement (Second) of Torts, Section 46.

These judgements shall be appealed on the basis of federal questions raised by the case and the judgements as enunciated in the Supreme Court Rules booklet describing those types of cases which may appeal.

AFFIDAVIT/CERTIFICATE OF SERVICE

I, Shirley E. Roussos, Plaintiff Pro Se, certify I mailed a copy ofthis notice of appeal to Clerk, Court of Specia Appeals, Courts of Appeal Building, Annapolis, Maryland, and Clerk, Circuit Court of Montgomery County, Md., Rockville, Maryland, and Geoffrey Gavett, Esq., Michael F. Flynn, Jr., Esquire for the defendants, 751 Rockville Pike, 15 A, Rockville, Maryland on this 15th day of February, 1985, certified mail, return receipt.

Signed before me this 15th Day of February1985

Sara M. Miller

Notary

Statute or statutes appealed from to Supreme Court are attached.

SHIRLEY E. ROUSSOS,
Appellant pro se
10241 RidgelineDrive
Rockville, Maryland
20879

(301) 926-4879

STATUTES UNDER WHICH THE APPEAL TO THIS COURT IS TAKEN

1. Amendment 14 to the United States Constitution: Section I:...Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
2. Amendment 7 of the U.S. Constitution In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.
3. Md. Digest, Volume 5B, Supplement 234-237, Md., 1977, par. 5 -
   In suits for damages for intentional infliction of emotional distress.... "Where reasonable men may differ, it is for jury to determine whether, in particular case, conduct has been sufficiently extreme and outrageous to result in liability.